

EXHIBIT NO.

4

DATE:

2/5/13

BILL NO.

SB 180

Northern Plains Resource Council Test
SB 180
by Beth Kaeding
February 5, 2013

Mr. Chairman and members of the Committee, my name is Beth Kaeding and I live in Bozeman. I am a long-time member and a past chair of Northern Plains Resource Council. We are a grassroots conservation and family agriculture organization that focuses on land stewardship, the protection of Montana's waters, and the preservation of family farms and ranches. I am here today on behalf of our members.

Eminent domain is a very powerful authority and should only be used as a last resort. Honest negotiation between willing parties should always be the primary focus of any project because the use of eminent domain means that a landowner's private property is condemned for taking.

Last session, Northern Plains vigorously opposed HB 198 because, in our view, it broadened the power of eminent domain in a wrong direction. HB 198 gives the power of eminent domain to any entity obtaining a certificate under the Major Facilities Siting Act, whether or not the project is a public project for the public good or not. Thus, HB 198 expands the power of eminent domain to private corporations for non-public, for-profit projects. Northern Plains does not believe that is right nor good public policy.

Northern Plains very much supports SB 180 and urges the Committee to give this bill a "do pass."

Thank you for the opportunity to speak before you today.

FACT SHEET FOR SB 180 — PREPARED BY CONCERNED CITIZENS MONTANA 2/5/2013

What is Eminent Domain?

- Eminent domain is the power to take private property that is necessary for a public use. The power of eminent domain is held by the State of Montana and by the U.S. Federal Government.

How HB 198 Changed The Law

- HB 198 changed the law by **delegating the power of eminent domain to persons holding a permit issued under the Major Facility Siting Act (MFSA)** codified at §75-20-113, MCA.

Prior to passage of HB 198, those with delegated power to condemn land were public entities and corporations that were regulated by the state. A list of the entities with delegated power to condemn property is found in the legislative Report on HJR 34.

What Does SB 180 Do As Amended?

- SB 180 **repeals the power of eminent domain to persons holding a permit issued under the Major Facility Siting Act (MFSA)** codified at §75-20-113, MCA.

Why Amend The Law?

- **To return to a more equitable balance between landowner and condemnor**
- **HB 198 gave the State of Montana's power of eminent domain to corporations serving as agents of the U. S. Federal government.** MATL, and other power lines like it, are regulated by the Federal Energy Regulatory Commission (FERC), but not by the Montana Public Service Commission.
- **MFSA was not designed to address the taking of private property** – it is an environmental review process for siting certain linear infrastructure and facilities and does not provide oversight on eminent domain for persons/corporations who hold a certificate of compliance under MFSA.
- Eminent domain law prior to HB 198 required that the condemnor proved public use in court. MFSA does not necessitate this. Thus, the **landowner is deprived the current constitutional protections for private property** when the MFSA permittee is granted the power of eminent domain upon certification by MFSA.
- Over the last 30 years MFSA has been repeatedly amended. **Is it wise, fair or even constitutional for the state to award its power of eminent domain to a certificate of compliance holder under MFSA?** There is no absolute certainty that MFSA will remain as written in 2011.

What Happens If SB 180 Passes As Amended?

- **Development in Montana will not come to a screeching halt if SB 180 passes.**
- **Utilities** such as Northwestern Energy and the Rural Electric cooperatives **can still build distribution power lines.**
- **Common carrier pipelines will still have the state's power of eminent domain.**
- **The power of federal eminent domain will still apply to railroads.**
- **Montana landowners will not be deprived the current procedural and constitutional protections for private property.**